



Hall County Regional Planning Commission

Wednesday, January 8, 2020

Regular Meeting

Item F5

**Public Hearing - Regulation Change- Chapter 36 of the Grand
Island City Code Article XI Wireless Communications Towers**

Staff Contact:

Agenda Item # 8

PLANNING DIRECTOR RECOMMENDATION TO REGIONAL PLANNING COMMISSION:

December 27, 2019

SUBJECT:

Concerning proposed amendments to Article XI Wireless Communication Towers Section 36-168 to 36-187 (C-10-2020GI)

PROPOSAL:

To amend and update the telecommunications section of the City of Grand Island Zoning Ordinance to reflect changes in technology and federal and state rules and laws.

OVERVIEW:

The Grand Island Legal Department and Hall County Regional Planning Department have been working with Bob Duchen an attorney with River Oaks Communications Corporation in Colorado Springs CO since the fall of 2018. We were aware that the FCC was making changes to rules regarding cell towers specifically those for micro-cell towers located on light poles and other utility poles within the street right-of-way. As part of that review Mr. Duchen has made suggestions for changes to the Grand Island Zoning Ordinance to update the rules for Macro Cell Towers located on private property.

The Grand Island Legal and Planning Departments along with representatives from Grand Island Utilities, Public Works and Building departments have reviewed and modified the proposed changes to fit Grand Island for macro cell towers located on private property.

A companion ordinance regulating and authorizing the use of public right-of-way by wireless telecommunications companies will be presented to Council along with these proposed changes to Chapter 36.

All of the proposed regulations changes are compliant with the current FCC Rules and Nebraska State Statutes.

A red line copy of the changes to Chapter 36 is attached.

RECOMMENDATION:

That the Regional Planning Commission recommend that the Grand Island City Council **approve** the changes to the Grand Island Zoning Ordinance as presented.

_____ Chad Nabity AICP, Planning Director

Article XI. Macro Cell Towers

§36-168. Purpose

The Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the Act) grants the Federal Communications Commission (FCC) jurisdiction over certain aspects of telecommunications services. This Article is intended to regulate macro cell towers, telecommunications facilities and antennas in the City in conformance with the Act without prohibiting or intending to prohibit any person from providing wireless communications services. Telecommunications facilities, towers and antennas in the City shall be constructed in a way to protect residential areas and land uses from potential adverse impact through careful design, siting, and camouflaging, to promote and encourage shared use/collocation of towers and other antenna support structures rather than the construction of additional single use towers, to avoid potential damage to property caused by towers, telecommunications facilities and antennas by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, repaired and removed when no longer used or are determined to be structurally unsound and to ensure that towers and antennas are compatible with surrounding land uses.

§36-169. Definitions

As used in this Article, the following terms shall have the following meanings:

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

Antenna Support Structure means any building or structure other than a tower which can be used for the location of telecommunications facilities.

Applicant means any person that applies for a Tower Development Permit.

Application means a process by which the owner of a tract of land within the zoning jurisdiction of the City submits a request to develop, construct, modify, or operate a tower upon such tract of land. The term application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to the City concerning such request.

Engineer means any engineer qualified and licensed by the State of Nebraska.

Owner means any person owning personal property, or real property with fee simple title or a leasehold exceeding (ten) 10 years in duration to any tract of land within the zoning jurisdiction of the City who desires to develop, construct, modify, or operate a tower upon such tract of land.

Person means an individual, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or organization.

Stealth means any telecommunications facility, tower, or antenna which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and towers designed to look other than like a tower such as light poles, power poles and trees.

Telecommunications Facilities means any cables, wires, lines, antennas, or any other equipment or facilities associated with the transmission or reception of communications signals which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, telecommunications facilities shall not include:

(1) Any satellite dish two (2) meters in diameter or less which is located on real estate zoned AG, TA, RO, B1, B2, B3, M1, M2, M3 and ME.

(2) Any satellite dish of one (1) meter or less in diameter, regardless of the zoning applicable to the location of the satellite dish.

Tower means a self-supporting lattice, guyed, or monopole structure which supports Telecommunications Facilities. The term Tower shall not include non-commercial amateur radio operators equipment as licensed by the FCC or a structure supporting an antenna serving residential premises or dwelling units exclusively.

Tower Development Permit means a permit issued by the City upon approval by the Mayor and City Council of an application to develop a tower within the zoning jurisdiction of the City; which permit shall continue in full force and effect for so long as the tower to which it applies conforms to this Article. Upon issuance, a Tower Development Permit shall be deemed to run with the land during the permit's duration and may be transferred, conveyed and assigned by the applicant to assignees and successors-in-interest.

Tower Owner means any person with an ownership interest of any nature in a proposed or existing tower following the issuance of a Tower Development Permit.

All terms in this Article which are not specifically defined herein shall be construed in accordance with the Communications Act of 1934, the Telecommunications Act of 1996 and the Orders, Rules and Regulations of the Federal Communications Commission (FCC).

§36-170. Location Of Towers, Construction Standards and Collocation

(A) Towers shall be permitted conditional uses of land in only those zoning districts where specifically listed and authorized in this code.

(B) No person shall develop, construct, modify or operate a tower upon any tract of land within the zoning jurisdiction of the City prior to approval of its application for a Tower Development Permit by the Mayor and City Council and issuance of the permit by the City. Applicants shall submit their application for a Tower Development Permit to the Building Department in triplicate and shall pay a filing fee in accordance with the City of Grand Island Fee Schedule.

(C) All towers, telecommunications facilities and antennas on which construction is commenced within the zoning jurisdiction of the City after _____, 2020, shall conform to the Building Code and all other construction standards set forth in the City Code, federal and state law, and applicable Industry standards. Upon completion of construction of a tower and prior to the commencement of use, an engineer's certification that the tower is structurally sound and in conformance with all of the aforementioned applicable regulatory standards shall be filed with the Building Department.

(D) It is the policy of the City to minimize the number of towers and to encourage the collocation of antennas of more than one wireless services provider on a single tower.

§36-171. Application To Develop A Tower

Prior to commencement of development or construction of a tower, an application shall be submitted in triplicate to the Building Department for a Tower Development Permit and shall include the following:

(A) The name, address and telephone number of the owner and if applicable, the lessee of the tract of land upon which the tower is to be located. Applicants shall include the owner of the tract of land and all persons having an ownership interest in the proposed tower. The application shall be executed by all applicants.

(B) The legal description and address of the tract of land on which the tower is to be located.

(C) The names, addresses and telephone numbers of all owners of other towers or useable antenna support structures within a one (1) mile radius of the location of the proposed tower, including publicly and privately owned towers or structures.

(D) An affidavit attesting to the fact that the applicant has made diligent but unsuccessful efforts to obtain permission to install or collocate the applicant's telecommunications facilities on a tower or useable antenna support structure within a one (1) mile radius of the proposed tower location or written technical evidence from an engineer that the applicant's telecommunications facilities cannot be installed or collocated on another tower or useable antenna support structure within a one (1) mile radius of the proposed tower location.

(E) Written evidence from an engineer that the proposed tower will meet the Building Code, all other construction standards set forth by the City Code and federal and state law and applicable Industry standards.

(F) Color photo simulations showing the proposed location of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the nearest residential zoned property and nearest roadway, street or highway.

(G) A scaled site plan clearly indicating the location, type, height and width of the proposed tower, on-site land uses and zoning district, adjacent land uses and zoning districts (including when adjacent to other municipalities or the County), adjacent roadways, a depiction of all proposed transmission equipment, proposed means of access, setbacks from property lines, elevation drawings or renderings of the proposed tower and any other structures, topography, landscaping, fencing, and finished color, method of camouflage and illumination, parking, utility runs and other information deemed necessary to assess compliance with this Article.

(H) A clear and complete written statement of purpose which shall minimally include: (a) a description of the objective to be achieved; (b) a to-scale map that identifies the proposed site location and the targeted service area to be benefited by the proposed project; and (c) full-color signal propagation maps with

objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. These materials shall be reviewed and signed by a Nebraska-licensed professional engineer.

(I) Descriptions and diagrams of the proposed tower, telecommunications facilities and antennas, manufacturer's literature, appurtenances such as buildings, driveway, parking area and fences or other security enclosures with sufficient detail to allow persons reviewing the application to understand the kind and nature of the proposed facility.

(J) An application for a building permit pursuant to Chapter 8 of the City Code.

§36-172. Tower Development Permit, Procedure and Factors

After receipt of an application for a Tower Development Permit, the City Clerk shall schedule a public hearing before the City Council to consider such application. Notice of such application shall be placed in a newspaper of general circulation in the City at least one (1) time ten (10) days prior to such hearing. In addition to the publication, the City Clerk shall cause a notice to be posted in a conspicuous place on the property on which action is pending. Such notice shall be not less than eighteen (18) inches in height and twenty four (24) inches in width with a white or yellow background and black letters not less than one and one-half (1½) inches in height. Such posted notice shall be so placed upon the premises so that it is easily visible from the street nearest the same and shall be so posted at least ten (10) days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor. The public hearing shall be held at which all interested parties shall be heard. The City Council may approve a Tower Development Permit as requested in the pending application with any conditions or safeguards it deems reasonable and appropriate based upon the application and input received at the public hearing or deny the application. In all zoning districts in which towers are a permitted conditional use of land, the Tower Development Permit shall be deemed a conditional use permit for said tract of land.

§36-173. Preferred Tower Locations

(A) All new towers are permitted only after application of the following siting priorities, ordered from most-preferred (1) to least-preferred (5):

- (1) manufacturing zones;
- (2) commercial zones;
- (3) other non-residential zoning districts;
- (4) parcels of land in residential zoning districts;
- (5) designated historic districts.

(B) The applicant for a tower shall address these preferences in an alternative sites analysis prepared pursuant to §36-174 below.

§36-174. Alternative Sites Analysis

(A) For a tower, the applicant must address the City's preferred tower locations with a detailed explanation justifying why a site of higher priority was not selected. The City's tower location preferences must be addressed in a clear and complete written alternative sites analysis that shows at least three (3) higher ranked, alternative sites considered that are in the geographic range of the service coverage objectives of the applicant, together with a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate.

(B) A complete alternative sites analysis provided under this subsection may include less than three (3) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least three (3) potentially available, higher ranked, alternative sites.

(C) For purposes of disqualifying potential collocations or alternative sites for the failure to meet the applicant's service coverage or capacity objectives the applicant will provide (a) a description of its objective, whether it be to address a deficiency in coverage or capacity; (b) detailed maps or other exhibits with clear and concise Radio Frequency ("RF") data to illustrate that the objective is not met using the alternative (whether it be collocation or a more preferred location); and (c) a description of why the alternative (collocation or a more preferred location) does not meet the objective.

§36-175. Setbacks and Separation or Buffer Requirements

(A) All towers up to fifty (50) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of fifty (50) feet in height shall be set back one additional foot for each foot of tower height in excess of fifty (50) feet, except where such setback is from property owned, controlled and/or maintained by the City of Grand Island and the City Council finds in granting the permit that reducing such additional setback will not cause harm to the intended use of the public property. The height of a tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.

(B) Towers exceeding one hundred (100) feet in height may not be located in any residential zoned district and must be separated from all residential zoned land and occupied structures other than those utilized by the tower owner, by a minimum of two hundred (200) feet or one hundred percent (100%) of the height of the proposed tower, whichever is greater.

(C) Towers of one hundred (100) feet or less in height may be located in residential zoned districts provided said tower is separated from any residential structure, school, church, and/or occupied structures other than those utilized by the tower owner, by a minimum of one hundred percent (100%) of the height of the proposed tower.

(D) Towers must meet the following minimum separation requirements from other towers:

(1) Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred fifty (750) feet.

(2) Self-supporting lattice or guyed towers shall be separated from all other self-supporting or guyed towers by a minimum of one thousand five hundred (1,500) feet.

6. §36-17. Illumination and Security Fences

(A) Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). In cases where there are residential zoned properties located within a distance of 300% of the height of the tower, any tower subject to this Article shall be equipped with lighting that minimizes its effect on residential zoned properties.

(B) All self-supporting lattice or guyed towers shall be enclosed within a security fence or other structure designed to preclude unauthorized access. Monopole towers shall be designed and constructed in a manner which will preclude to the extent practical, unauthorized climbing of said structure.

§36-177. Exterior Finish, Notice, Signs and Visual Impact

Exterior Finish. Towers shall have an exterior finish which enhances compatibility with adjacent land uses, subject to review and approval by the City Council as part of the application approval process.

(B) Notice. For purposes of this Article, any Tower Development Permit shall require notice to surrounding property owners located within two hundred (200) feet of the legal boundary of the real property where the tower is to be located. An applicant or its designee shall provide this list to the City.

(C) Signs. No tower may bear any signage or advertisement(s) other than signage required by law or expressly permitted or required by the City.

(D) Visual Impact. All towers are encouraged to be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the tower.

§36-178. Landscaping

All tracts of land on which towers, antenna support structures, telecommunications facilities and/or antennas are located shall be subject to the landscaping requirements of the City Code.

§36-179. Maintenance, Repair or Modification of Existing Towers

All towers constructed or under construction on February 1, 1998 may continue in existence as a non-conforming structure and may be maintained or repaired without complying with any of the requirements of this Article. Nonconforming structures or uses may not be enlarged or the degree of nonconformance increased without complying with this Article, including applying for and obtaining a Tower Development Permit. Any modification or reconstruction of a tower constructed or under construction after February 1, 1998, shall require compliance with the requirements of this Article

including applying for and obtaining a Tower Development Permit. Said application shall describe and specify all items which do not comply with this Article and may request, subject to approval by the Mayor and City Council, an exemption from compliance as a condition of the Tower Development Permit.

§36-180. Inspections

(A) The City reserves the right to conduct an inspection of towers, antenna support structures, telecommunications facilities and antennas upon reasonable notice to the tower owner or operator to determine compliance with this Article and to prevent structural and equipment failures and accidents which may cause damage, injuries or nuisances to the public. Inspections may be made to determine compliance with the Building Code and any other construction standards set forth in the City Code, federal and state law or applicable Industry standards.

(B) If, upon inspection, the City concludes that a tower, antenna support structure, telecommunications facilities or antennas fail to comply with codes or standards and constitute a danger to persons or property, then upon written notice being provided to the owner, the owner shall have sixty (60) days to bring such into compliance with the codes and standards. Failure to bring such into compliance within said sixty (60) days shall constitute grounds for removal at the owner's expense.

§36-181. Maintenance

The towers, antenna support structures, telecommunications facilities and antennas shall at all times be kept and maintained in good condition, order and repair so that the same do not constitute a nuisance to or a danger to the life or property of any person or the public.

§36-182. Abandonment

If any tower shall cease to be used for a period of three hundred sixty-five (365) days, the Building Department shall notify the tower owner that the site will be subject to a determination by the Building Department Director that the site has been abandoned. Upon issuance of a Notice to Show Cause by the Building Department Director, the tower owner shall have thirty (30) days to show by a preponderance of the evidence that the tower has been in use or under repair during the period of apparent abandonment. In the event the tower owner fails to show that the tower has been in use or under repair during the relevant period, the Building Department Director shall issue a final determination of abandonment of the site and the tower owner shall have seventy five (75) days thereafter to dismantle and move the tower. In the event the tower is not dismantled and removed, the tower shall be declared a public nuisance by the Building Department Director, or his/her designee and a written request shall be directed to the City Attorney to proceed to abate said public nuisance pursuant to §20-15 of the Grand Island City Code, and charge the costs thereof against the real estate on which the tower is located or the owner of record of the said real estate.

§36-183. Certificate of Completion, Compliance and Appearance

(A) A certificate of completion will only be granted upon satisfactory evidence that the tower was installed in substantial compliance with the approved plans and photo simulations.

(B) If it is found that the tower does not substantially comply with the approved plans and photo simulations, the applicant shall make any and all such changes required to bring the tower into compliance promptly.

(C) The site and tower, including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans.

(D) All graffiti at a tower site must be removed at the sole expense of the permittee after notification by the City to the owner or operator of the tower.

(E) If any FCC, State or other governmental license or any other governmental approval to provide communication services is ever revoked as to any tower site permitted or authorized by the City, the permittee must inform the City of the revocation within thirty (30) days of receiving notice of such revocation.

§36-184. Satellite Dish Regulations

After February 1, 1998, installation of satellite dish antennas shall be permitted within the zoning jurisdiction of the City of Grand Island only upon compliance with the following criteria:

(B)

(A) Single family residences may not have more than one (1) satellite dish.

(B) Multiple family residences with ten or less dwelling units may have no more than one (1) satellite dish. Multiple family residences with more than ten (10) dwelling units may have no more than two (2) satellite dishes.

(C) In residential zoning districts, a satellite dish shall not be installed in the required front yard setback area or side yard setback area.

(D) All satellite dishes installed within the zoning jurisdiction of the City after February 1, 1998, shall be of a neutral color such as black, gray, brown, or such other color as will blend with the surrounding dominant color in order to camouflage the dish.

§36-185. Severability

If any clause, section, or any other part of this Article shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Article shall not be affected thereby, but shall remain in full force and effect.

186. Conflicts

These Macro Cell Towers regulations are in addition to other regulations in the City Code. In case of a conflict between regulations, the more restrictive shall apply.